

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
( Norfolk & Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the controlling Agreement of September 1, 1949, as subsequently amended when on April 6, 1981, the herein named employees were furloughed without proper notice; E. D. Conley, R. D. Lindamood, G. K. McGraw, D. E. Thompson and G. R. Thomson.
2. That said furlough was improper and represents a violation of Rule No. 26 of the controlling Agreement as subsequently amended by Article III of the June 5, 1962 Agreement.
3. That because of such violation and unjust action, the Norfolk and Western be ordered to make the herein named employees whole by compensating them five (5) days (forty hours) each, at their straight time rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Employees involved in this dispute are carmen employed by the Carrier at Portsmouth, Ohio. On March 27, 1981, miners employed by some of the coal companies in the States of Virginia, West Virginia and Kentucky went on strike, which apparently lasted until May 28, 1981 or a period of two months. As a result of the coal miners strike which apparently involved about half the coal miners in the area, the Carrier's coal hauling business was reduced and the need for carmen's services was also reduced. On April 6, 1981, Carrier posted a notice furloughing the Claimants at the close of that business day. According to Carrier they had previously furloughed "in excess of 213 carmen...At Portsmouth with a five-working day notice". On May 29, 1981 the Employees filed a claim on behalf of the Claimants for five days compensation.

Article II reads in part:

"Article II Force Reduction Rule

(a) Rules, agreement or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.

(b) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees."

The Employees contend that the Carrier "was well aware of the anticipated slow down in coal shipments..." And that the Carrier with all their figures and tables of percentage decline in gross ton miles and other innuendoes is only an attempt to camouflage their error in not providing the proper notice furlough notice to the claimants."

The Employees further contend that approximately half the mines served by the Carrier were "non-union" and were not affected by the strike.

The Carrier contends that they were not attempting to take advantage of the situation and circumvent and/or sharp shoot the agreement, that the number of employees furloughed under the emergency provisions of the agreement was held to a minimum. In support of this contention they cite the fact that they had previously furloughed in excess of 213 carmen at Portsmouth with a five day working notice.

In further support of their position the Carrier contends that union pickets appeared at many of the non-union mines, violence erupted, and shipments of coal were greatly reduced and in some instances halted altogether at these mines. And that it could not be predicted with any degree of certainty the number of trains or cars that would be shipped at any time.

The Carrier also presents records that show the number of inbound and outbound trains and cars during the months of January through July 1980 and 1981. These records show that in March of 1981 the number of outbound (loaded) cars increased 65,046 in February to 77,251 in March and then declined to 49,061 in April and to 45,912 in May, after which the number increased to 63,881 in June and to 73,372 in July. This indicates that the coal miners strike did have an adverse affect on Carrier's coal hauling business for the months of April and May of 1981 but not for any other month.

Both the Carrier and the Employees cite various awards in support of their contentions.

In regards to Carrier's contention that union pickets had appeared at many of the non-union mines, that violence had erupted, and shipments of coal were greatly reduced from these non-union mines and in some instances halted altogether, this is impressive and had the Carrier made this contention during handling of the claim on the property could well have been decisive. However such contentions were not made at that time and cannot be considered now.

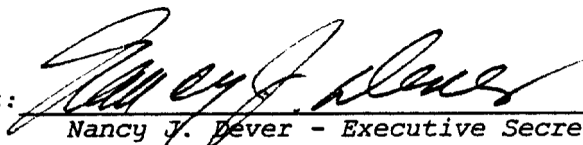
The Board is also left without any information as to just how much of the decline in coal hauling business occurred between dates of March 27, 1981, when the strike started, and date of April 6, 1981 when the Claimants were furloughed thus the Board is left without any real proof that the five working days notice requirement could not have been complied with. Accordingly, the Board must sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 31st day of October 1984.